



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 21, 2006

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 11, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver Program.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

The Aged /Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for a nursing facility level of care but have chosen the Waiver Program as a means to remain in their home. [Aged/Disabled (HCB) Services Manual 570-570.1b (11/1/03)].

The information which was submitted at your hearing revealed that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
WVMI
BoSS
CCIL

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

—,

Claimant,

v.

Action Number: 05-BOR-7002

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 21, 2006 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on May 11, 2006 on a timely appeal, filed November 30, 2005.

It should be noted here that the Claimant's benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services).

Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

III. PARTICIPANTS:

[REDACTED], Claimant
[REDACTED], RN, Homemaker Nurse, Helping Hands
[REDACTED], Homemaker, Helping Hands
[REDACTED], CM, CCIL
[REDACTED], RN, CCIL (observing)
[REDACTED], State Hearing Officer (observing)
[REDACTED], RN, WVMI (participated telephonically)
Kay Ikerd, RN, BoSS (participated telephonically)

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department is correct in its proposal to terminate the Claimant's benefits and services through the Aged/Disabled Waiver (HCB) Program based on medical eligibility.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 560 & 570.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual 560 & 570
- D-2 Medical Assessment, PAS-2000, dated 10/10/05
- D-3 Notice of Potential Denial from WVMI dated 10/20/05
- D-3a Correspondence from [REDACTED], D.O., dated 10/28/06
- D-4 Notice of Termination/Denial dated 11/17/05

VII. FINDINGS OF FACT:

- 1) On October 10, 2005, the Claimant was reevaluated by WVMI (medically assessed) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program, and to determine the appropriate level of care.

- 2) On October 20, 2005, the Department notified the Claimant via a notice of Potential Denial (exhibit D-3) that medical eligibility could not be established. This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations. Based on your PAS you have deficiencies in only 3 areas – Vacating a building, bathing and walking.

Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

This notice goes on to advise the Claimant that he can provide additional information regarding his medical condition within the next 2-weeks for consideration before a final decision is made. Additional information was received and has been identified as Exhibit D-3a.

- 3) On or about December 23, 2005, the Claimant was notified that his ADW benefits and services would be terminated. This notice includes some of the following pertinent information:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate / deny your homemaker and case management services.

Eligibility for the Aged/Disabled Waiver program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 3 areas – Vacating a building, bathing and walking.

- 4) The Claimant and his representatives contend that the Claimant should have been awarded a deficit in transferring, grooming and incontinence (bowel and bladder).
- 5) Exhibit D-3a, correspondence from [REDACTED] D.O., dated 10/28/05 states – “Mr. ___ is a paraplegic due to a care accident. Due to this he needs physical assistance for bathing, grooming and cooking duties. He would greatly benefit from the waiver program.”

The Department noted that the Claimant was awarded a deficit in bathing as a result of the medical assessment, however, a deficit cannot be awarded for “cooking duties” and there are no functional deficits noted by the physician to substantiate a deficit in grooming.

- 6) Testimony received at the hearing reveals that the Claimant requires assistance with transferring on and off of his shower chair, however, the Claimant is able to transfer independently in all other areas of his home – in and out of his bed, in and out of his wheelchair, in and out of his car, as well as off and on the couch and toilet. Because a transfer on and off of the shower chair would only occur during a bath, a deficit was given in bathing and not in transferring. The Department noted that the Claimant is independent in bathing and was only awarded the deficit in bathing based on his inability to transfer on and off of the shower chair. Based on the evidence, a deficit should not be awarded in transferring and was correctly identified as a deficit in bathing.
- 7) [REDACTED], RN, testified that the Claimant has a history of bladder incontinence. She testified that if he waits too long he leaks urine and for this reason he often wears a Texas Catheter. The Claimant testified that he only wears the catheter when he is away from his home. The evidence indicates that the Claimant is able to maintain bladder control when he is in his home and/or close to a restroom facility. In closing, Ms. [REDACTED] testified that the Claimant suffers episodes of bowel incontinence when he leans forward. This information is not included anywhere on the pass, it is not substantiated in any medical evidence and the circumstances specific to bowel incontinence, including frequency, was not provided. Based on the evidence, a deficit cannot be established in incontinence (bowel or bladder).
- 8) The evidence reveals that the Claimant washes and combs his hair independently but that he is unable to operate a fingernail clipper with his left hand. The Claimant's homemaker testified that she must clip the nails on his right hand and that she must occasionally assist him with cutting his toenails. While the Claimant reported that he could clip his nails during the assessment, he indicated that he was confused by the question. While it is questionable if the Claimant misunderstood the questions related to grooming, based on the evidence, the Claimant is unable to operate a nail clipper with his left hand. A deficit is therefore awarded in grooming (+1).
- 9) Aged/Disabled Home and Community Based Services Manual § 570 – Program Eligibility for Client:
- Applicants for the ADW Program must meet all of the following criteria to be eligible for the Program:
- C. Be approved as medically eligible for NF level of care.
- 10) Aged/Disabled Home and Community Based Services Manual § 570.1.a. - Purpose:
- The purpose of the medical eligibility review is to ensure the following:
- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.

- B. Each applicant/client determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

11) Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria:

An individual must have five (5) deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. # 24: Decubitus - Stage 3 or 4
- B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
- C. #26: Functional abilities of individual in the home.
 - Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
 - Bathing ----- Level 2 or higher (physical assistance or more)
 - Grooming -----Level 2 or higher (physical assistance or more)
 - Dressing ----- Level 2 or higher (physical assistance or more)
 - Continence --- Level 3 or higher (must be incontinent)
 - Orientation---- Level 3 or higher (totally disoriented, comatose)
 - Transfer-----Level 3 or higher (one person or two person assist in the home)
 - Walking ----- Level 3 or higher (one person or two person assist in the home)
 - Wheeling ----- Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home Do not count outside the home)
- D. #27: Individual has skilled needs in one or more of these areas – (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.
- E. #28: The individual is not (c) capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) A medical assessment was completed on the Claimant to determine continued medical eligibility for participation in the Aged/Disabled Waiver Program on October 10, 2005.

- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 3) The medical assessment completed by WVMH reveals that the Claimant demonstrated three (3) program qualifying deficits – Vacating a building, bathing and walking.
- 4) The evidence submitted on behalf of the Claimant establishes one (1) additional deficit - grooming.
- 5) Whereas the Claimant exhibits four (4) deficits in the specific categories of nursing services, continued medical eligibility for the Aged & Disabled Waiver Services Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of June, 2006.

**Thomas E. Arnett
State Hearing Officer**